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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 8th February 2005

No. 1363–li/1(B)-3/2005-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th November 2004 in Industrial Dispute Case No. 55/1991 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the management of M/s. Orissa Express Transport Agency, Cuttack and its workman Shri Ratnakar Patra was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 55 OF 1991

Dated the 30th November 2004

Present :

Shri P. K. Sahoo, O.S.J.S. (Jr. Branch)
Presiding Officer, Labour Court
Bhubaneswar.

Between :

The management of .. First Party—Management
M/s. Orissa Express Transport Agency,
Cuttack.

And

Its workman .. Second Party—Workman
Shri Ratnakar Patra

Appearances :

For the First Party—Management .. Shri K. K. Nayak

For the Second Party—Workman himself .. Shri R. Patra

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12, read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, have referred the matter in dispute to this Court in the Labour & Employment Department, memo No. 5193(5)-L. E., dated the 11th April 1991 for adjudication and Award.

2. The terms of reference may briefly be stated as follows :—

“Whether the termination of services of Shri Ratnakar Patra, Ex-Clerk by the management of M/s. Orissa Express Transport Agency, Cuttack with effect from 14th August 1987 is legal and/or justified ? If not, is the the workman entitled to any relief ?”

3. The illegal termination of services of workman Ratnakar Patra, Ex-Clerk by the management of M/s. Orissa Express Transport Agency, Cuttack (in short the management) with effect from the 14th August 1987 is the subject matter of challenge under the present reference. Accordingly to the workman, he was engaged as Clerk by the management in the month of February, 1974. He continued to work as such till August 1987 when he was verbally refused employment by the management on the 14th August 1987. It is further alleged that the management while terminating his service had not followed the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). While challenging the legality and justifiability of the action of the management in terminating his service with effect from the 14th August 1987, he has now prayed for his reinstatement in service with full back wages and other service benefits. Hence the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman. According to the management, the workman was never an employee under the said firm and therefore he is not entitled to any relief as prayed for. Accordingly the rejection of the claim of the workman has been prayed for by the management under the present reference.

5. On the basis of the above pleadings of the parties, the following issues have been framed :—

ISSUES

(i) Whether the termination of services of Shri Ratnakar Patra, Ex-Clerk by the management of M/s. Orissa Express Transport Agency, Cuttack with effect from the 14th August 1987 is legal and/or justified ?

(ii) If not, is the workman entitled to any relief ?

6. The workman in support of his case has examined himself as W. W. 1 and has relied upon the xerox copies of the letters, dated the 29th April 1976, 19th April 1976 and 18th November 1977 marked as Exts. 1 to 3 respectively. On the other hand, the management has examined one Pravakar Das as M. W. 1 but has not relied upon any document in support of its case.

FINDINGS

7. *Issue Nos. (i) and (ii)* – For better appreciation and adjudication of the dispute under reference both the above issues are taken up together.

It is in the evidence of the workman that he was working under the management from February, 1974 till August, 1987 in the Cuttack Branch. On the 14th August 1987 he was verbally refused employment and from that date the Cuttack Branch was permanently closed. By the time he was refused employment, he was not given his wages for last five months and when he demanded for payment of arrear wages, the management did not pay the same for which he approached the Labour Officer, Cuttack. In his evidence he has categorically stated that at the time of refusal of employment he was not given any notice or notice pay and retrenchment compensation. He has duly proved the letters marked as Exts. 1 to 3 respectively. In his cross-examination he admits that he was not issued with any appointment order nor any retrenchment order. The perusal of the evidence led by the management through M. W. 1 clearly reveals that he was working under the management since 1978 as Manager and the management was not having its branch office at Cuttack at any point of time. M. W. 1 has categorically stated in his evidence that the head office of the management was located at Kolkata and the workman was never an employee under the management. During cross-examination he has denied his knowledge about the engagement of one Sarat Das in the head office at Kolkata.

8. Both the parties have led their evidence in support of their respective cases. On perusal of the evidence of the workman it is abundantly clear that he had worked under the management with effect from February, 1974 till the date of his termination on the 14th August, 1987. The management without any rhyme or reason had illegally terminated him from service without giving any prior notice or notice pay and retrenchment compensation which in my view are in complete violation of the mandatory provisions of Section 25-F of the Act. The evidence led by the management through M. W. 1 clearly shows that the management had no branch office at Cuttack and the workman was never an employee under the management. But on perusal of the documents already relied upon by the workman marked as Exts. 1 to 3 clearly goes to show that the workman was working under the management and he was engaged at Cuttack Branch office. Therefore the plea taken by the management to the effect that the workman was never an employee under the management and that the management had no branch office at Cuttack and that the workman was not working in the branch office at Cuttack is without substance. Rather the workman has successfully proved and established that he was working under the management at Cuttack Branch office with effect from February, 1974 till the date of his termination on the 14th August, 1987 and the management while terminating his service had not followed the mandate of Section 25-F of the Act. It has been decided in catena of decisions that provisions of Section 25-F of the Act is mandatory and any violation thereof will render the retrenchment void *ab initio*. It is also well settled that compliance of Section 25-F of the Act is must, otherwise, the order of termination becomes null and void. Section 25-F of the Act being a beneficial legislation it has to be strictly complied with and is a mandatory precondition. But in the instant case the condition precedent has not at all been followed by the management while terminating the services of the workman. The Hon'ble Apex Court in the case of *Karnatak State Road Transport Corporation Vrs. M. Beraiah and workmen Vrs. Food Corporation of India* reported in AIR 1983 Supreme Court 1320 and AIR 1985 Supreme Court 670 respectively has consistently taken the view that "The provisions of

Section 25-F of the Act is mandatory and any violation thereof will render the retrenchment void *ab initio*". Apart from the violation of Section of the Act, the management has also taken a stand to the effect that he was not an employee under the management but such plea has nowhere been substantiated by the management anywhere in the evidence. In such premises, the plea taken by the management is without force. Rather the workman has succeeded in proving his case with regard to his continuous service having been rendered by him in the establishment of the management. After carefully examining the evidence led by the parties available on record being coupled with the proved documents and keeping in view the settled position of law, I am of the considered view that the action of the management in terminating the services of the workman with effect from the 14th September 1987 was illegal, unjustified and against the mandate of Section 25-F of the Act. In that view of the matter, the workman is entitled to the relief of reinstatement.

9. The perusal of the schedule of reference clearly emerges that the workman has been terminated from service with effect from the 14th August 1987 and in the meantime 17 years have been elapsed. There is no cogent material, on record to prove and establish that the workman has been gainfully employed elsewhere with effect from the date of this termination. In such circumstances the workman is entitled to be reinstated in service but on the facts and circumstances of this case, as he had not worked with effect from the date of termination he is entitled to get a lump sum compensation to the tune of Rs. 6,000 towards back wages, which in my opinion would meet the ends of justice in the instant case. Both the above issues are answered accordingly.

10. Hence it is ordered :

That the termination of services of Shri Ratnakar Patra, Ex-Clerk by the management of M/s. Orissa Express Transport Agency, Cuttack with effect from the 14th August 1987 is neither legal nor justified. The workman Shri Patra is entitled to be reinstated in service with a lump sum compensation of Rs. 6,000 (Rupees six thousand only) towards back wages.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
(30-11-2004)
Presiding Officer
Labour Court
Bhubaneswar.

P. K. SAHOO
(30-11-2004)
Presiding Officer
Labour Court
Bhubaneswar.

By order of the Governor
D. MISHRA
Under-Secretary to Government